IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 783 of 1991

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJNIKANT SOMCHAND SHAH - Petitioner(s)

Versus

DIST. & SESSIONS JUDGE & 2 - Respondent(s)

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Appearance :
MR YF MEHTA for MR JF MEHTA for Petitioner No(s).: 1.
MR JB PARDIWALA for Respondent No(s).: 1.
MR UR BHATT, AGP for Respondent No(s).: 2.
MR AR SHAIKH for Respondent No(s).: 3.
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
Date : 16/08/2005

ORAL JUDGMENT

Heard the learned advocates.

Feeling aggrieved by promotion of the respondent no.3 as Clerk of the Court in the Court of learned Civil Judge (J.D.), Gandhinagar, the petitioner then a Senior Clerk has preferred the present petition under Article

226 of the Constitution of India.

According to the petitioner he was senior to the respondent no.3 in the cadre of Senior Clerk under the District Judge, Ahmedabad (Rural). The petitioner, therefore, had a prior right of promotion. However, the respondent no.3 was promoted bypassing the petitioner's right to promotion.

In answer to the notice issued by this Court the respondent no.1 has appeared through the learned advocate Mr.Pardiwala and has contested the petition. It is admitted that the petitioner was senior to the respondent no.3. However, it is contended that promotion to the post of Clerk of the Court (Head Clerk) is governed by the relevant recruitment rules as well as the prevalent reservation policy. The respondent no.3 belonged to a Scheduled Caste. He had a right to promotion as a reserved category candidate. In view of the prevalent reservation policy contained in the Government Resolution dated 22nd April, 1983 read with the Government Resolution dated 21st January, 1986, the respondent no.3, being a Scheduled Caste candidate, had a right to be considered for promotion against roster point no.1. However, at the relevant time only one post was required to be filled in.

Therefore, the said post was treated as an unreserved post and the roster at point no.1 was carried forward. On the second occasion the post was required to be filled in by a Scheduled Caste candidate. But at the relevant time the second vacancy was filled in by person of unreserved category and the roster at point no.1 was carried forward. It was this carried forward roster point no.1 on which the respondent no.3 was promoted by the impugned order dated 28th December, 1990. The petitioner too was considered for promotion and got promoted as Clerk of the Court as an unreserved category candidate.

There is no dispute that the respondent no.3 belongs to a Scheduled Caste and that he was entitled to promotion as a Scheduled Caste candidate. It is also not in dispute that he was promoted prior to the petitioner on a reserved post according to the prevalent roster and the reservation policy of the State Government.

In above view of the matter the promotion of the respondent no.3 cannot be said to be illegal or unlawful. The petitioner cannot have a legitimate grievance against the promotion of the respondent no.3 made in accordance with the roster. The petitioner is, therefore, not entitled to the relief as prayed for. The petition is

dismissed. Rule is discharged.

(Ms. R.M.Doshit, J.)

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